

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
September 17, 2007, at 9:00 a.m.
Room 303 State Capitol Building
Helena, Montana

PRESENT: Governor Brian Schweitzer and Attorney General Mike McGrath

VIA PHONE: Superintendent of Public Instruction Linda McCulloch, State Auditor John Morrison, and Secretary of State Brad Johnson

Mr. McGrath moved for approval of the minutes from the August 20, 2007, meeting of the Board of Land Commissioners. Seconded by Mr. Morrison. Motion carried unanimously.

BUSINESS CONSIDERED:

907-1 LONE PINE STATE PARK ACQUISITION (FWP)

Ms. Sexton said this is a proposal by FWP to acquire a 40-acre tract that adjoins Lone Pine State Park in Flathead County. It is currently undeveloped and provides space for diverse recreation and wildlife habitat.

Tom Reilly, FWP Assistant Administrator of State Parks, said the project we have before you today is the acquisition of a 40-acre parcel adjacent to Lone Pine State Park. It has been used by the public for many years, we've had a very supportive and cooperative private landowner that has allowed public access. We've worked with him to purchase the property in fee title. We are asking for final approval on this. The total cost is \$470,000. We've gone through the public involvement process and through our FWP Commission. Through the public process we've had about 25 positive comments supporting it. It provides a lot of trail and horseback and bike opportunities right at the doorstep of Kalispell. We would ask for final approval of this project.

Motion was made by Mr. McGrath to approve the acquisition adjacent to the Lone Pine State Park. Seconded by Ms. McCulloch.

Governor Schweitzer said you said there were 25 positive comments. Any negative comments?

Mr. Reilly replied no.

Governor Schweitzer said let's talk about the amount we're paying for it, do you think we are getting a fair deal?

Mr. Reilly replied yes, the parcel was appraised at \$600,000, the Van Rippers, the folks who own it, put a conservation easement on the property so we could not commercially harvest timber on it and that dropped the value approximately \$130,000. So, yes we are paying far less than the appraised value.

Governor Schweitzer said I know this area personally and it is really part of the community of one of the fastest growing communities in Montana. It will permanently put aside more green space and it is probably a good move when you start to think about long term planning for communities.

A vote was taken on the motion to approve. Motion carried unanimously.

907-2 PRELIMINARY APPROVAL FOR TRANSFER OF OLD CAMPUS OF PINE HILLS

Ms. Sexton said this is for preliminary approval for a §351 transfer of the old campus at Pine Hills Correctional Facility to the County of Custer. Custer County would like to acquire the property and use some of the existing buildings for storage and potentially for the location of a juvenile detention center. They are apprised and aware of the environmental hazard associated with the property. The DoC does own the property as the reorganization of Department of Institutions into Department of Corrections. This is allowed by §77-2-351, MCA, and the transfer was presented to the State Administration Committee during the special session of September 5, 2007, which is a requirement of a §351 transfer. No issues or concerns were raised by the Committee. There will be some restrictions placed by the Department of Corrections on the property, i.e., there will be no sale of weapons on the property and the buyer or the receiver will install a security fence between the south side of the property and the current Pine Hills Campus. Access to the property will not be allowed through the current access. There are other opportunities there and access must be developed. Currently this is not in use and if you recall, this has been brought to the Land Board before for auction and it was unsuccessful in the auction arena. The Director of the Department of Corrections recommends the Board grant preliminary approval for the transfer of this property to Custer County. Upon approval, there will be public notice and the public will be given the opportunity to comment.

Gary Matthews, Custer County Commissioner, said this land is in a unique location, it is right next to the new Pine Hills Youth Correctional Facility but it is on a major interchange of Haynes Avenue and Leighton Boulevard. Our hope was that that land would have been sold but it wasn't sold, in fact nobody even bid on it. Custer County has some needs. We're looking at the rising costs of juvenile detention centers and there is approximately 12 buildings on this land. However, two of them have potential, one is a building built in 1970 that could fit that need for Custer County. The county also needs land for a rural fire department, they are expanding and under the §351 transfer these would be things we could do. Further down the road, Custer County also has a jail that was built in 1904 and presently we are looking at grants to try and deal with that need for a jail. Not that this jail would be sited here because we like the existing location, but if for some reason it couldn't be built on the existing location that would be a possibility. So there is some advantages for Custer County in this transfer and we hope that could happen.

Steve Gibson, Department of Corrections Youth Services Administrator, said we support this transfer. The reason I believe there were no bidders was because of the liability for demolition and some of the older buildings and Custer County has agreed to do that. The last estimate on the demolition on some of those buildings is about \$800,000. It is good for Custer County and it is good for the state.

Motion was made by Ms. McCulloch to approve the transfer. Seconded by Mr. Johnson.

Ms. McCulloch said I am wondering if there is a timeline for when the juvenile facility might be in operation?

Mr. Matthews said I would venture to say the rural fire department building would happen before the juvenile detention center. Our hope is we will be able to take the 16th Judicial District which is eight counties. We have a lot of work to do with the county commissioners in that eight-county area to try and work out the details for a juvenile detention center. So I would say the rural fire department building will

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be the first thing on the land and we are looking a few years down the road before we will be able to get a detention center.

Ms. McCulloch said a few years out?

Mr. Matthews said if the Legislature can give more money next time I'd say maybe two years, but the resources of Custer County to try and do a juvenile detention center right now on its own it will be very difficult. We need cooperation from the other counties that surround us. That cost is actually turning into about \$225 to \$300 per day when we have to send a juvenile to a detention center, and in Eastern Montana they either go to Billings or Williston, ND.

Governor Schweitzer said I have a question and it may be best answered by the Attorney General. Do we have liability protection here if in the future there is asbestos or petroleum or any of these long term kind of issues that turn up with old buildings?

Mr. McGrath said probably. We can sign a release, we can do all of the things that we want to do to insure that Custer County indemnifies us but if there is some kind of pollution or injury down the road, we may have liability. That is one of the reasons I'm sure they want the buildings demolished so it reduces that potential liability for both parties.

Governor Schweitzer said does somebody know or care to venture an idea about the potential asbestos problems?

Mr. Matthews said we have been out there and had the state health and safety person with us. There is actually an EIS that was done quite a few years ago. The asbestos is a problem there. As far as the liability issue it is not an issue until we put people into the buildings or until we try and tear those buildings down and that is where you have the big cost. Custer County's plan is because the location of these buildings is basically in five of the 17 acres, we are going to not use those buildings we are not going to put people into them and we are going to start going after grants to try and fix some of the problems we have with the buildings. But we are ready to assume the liability and we feel down the road we will be able to make that a better place and get rid of all the liability there is right now.

A vote was taken on the motion to approve the transfer. Motion carried unanimously.

907-3 FINAL APPROVAL OF MT. HERITAGE COMMISSION/TUCKER LAND
EXCHANGE

Ms. Sexton said this exchange came before the Board recently and is located in Virginia City. It is a small exchange of property, a relocation of lines. It is less than ½ acre and the appraised value is around \$2,000 on each side. We did the exchange criteria analysis for this and the Heritage Commission believes this exchange would benefit the Montana Heritage Commission and request final approval from the Board.

Paul Reichert, Interim Director Montana Heritage Commission, said this is really a clarification of ownership of lot lines for the Heritage Commission to make sure our buildings sit on property we own. It's equivalent value and is really just cleaning an historic problem between the Heritage Commission and a private property owner in Virginia City.

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Mr. McGrath said there is some litigation involving some boundary dispute with the railroad, is this going to affect that one way or another?

Mr. Reichert said this is a completely different property owner. They are not near each other. I don't know we are setting any significant precedents. What prompted this exchange is that one of our buildings is sitting on someone else's property. If there are some other land issues with the Heritage Commission and other private property owners in that area we are going to approach each one as an individual effort.

Mr. McGrath said this won't resolve that particular one?

Mr. Reichert said that is correct.

Governor Schweitzer said I have one question, it says they will exchange .4 acres which is 1,915 square feet of land. Being a person who is a Bobcat I recognize there is 43,560 square feet in an acre and 1,915 square feet isn't near .4 acres. So may be it is .04? Who has done the math?

Mr. Morrison said I bet there is a digit missing on the square footage.

Governor Schweitzer said I am hoping so. Who has a calculator? Is that .04? I think Mr. McGrath has asked a good question in terms of precedent. We have now established the value of land at \$55,000 per acre more or less.

Mr. Reichert said we followed the protocol of having an appraisal, it is in town, those lots have surfaces if we go forward with another exchange somewhere else in that community that is going to follow the same process of getting an appraisal. This has sewer and water and other parcels don't.

Governor Schweitzer said we'll add that additional zero in the correct place and we'll note that in the record.

Motion was made by Mr. Morrison to approve the exchange. Seconded by Mr. McGrath. Motion carried unanimously.

907-4 FINAL APPROVAL OF DNRC/CB RANCH LAND EXCHANGE

Ms. Sexton said this is a request for final approval for an exchange between the CB Ranch in Ravalli County and the State of Montana. This is near Darby and was first brought to the Board for approval in December 2005. The acres involved would be 640 acres, a section of trust land would be exchanged for two sections, 1,2880 acres of CB Ranch. This is a component of a 20-year effort to clean up the checkerboard nature of land in the Rye Creek vicinity. The CB Ranch wishes to acquire Section 36 which is adjacent to their ranch, the state does receive two sections of land which are adjacent to state land so the state land will be consolidated. There was a hearing held in Hamilton in July 2007, fifteen people attended and favorable comments were received. The exchange criteria analysis has been thoroughly reviewed and this does meet or exceed all of the criteria. Ms. Sexton recommended final approval by the Board. If approved, DNRC and CB will complete the necessary steps to finalize the land exchange.

Motion was made by Mr. McGrath to grant final approval of the land exchange. Seconded by Mr. Johnson. Motion carried unanimously.

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907-5 FINAL APPROVAL OF LAND BANKING PARCEL #376 ROCK CREEK CATTLE COMPANY

Ms. Sexton said the nominator was the Rock Creek Cattle Company and the parcel is located about five miles northwest of Deer Lodge and there is no public access. The appraised value with access was \$1,250 per acre, so a total of \$800,000. The minimum bid was set by the Land Board in June 2007 and the parcel was sold at auction on August 22, 2007, for the minimum bid. Ms. Sexton recommended the Board grant final approval to sell land banking parcel #376. They are looking at an October 1, 2007 closing for this parcel.

Greg Lane, Rock Creek Cattle Company, said I want to thank the members of DNRC who worked on this transaction, Jeanne Holmgren, Candace Durran, Liz Mullens, Tony Liane for all their hard work over the last year. In the spirit of cooperation I think we ended up with a good deal for the state and a fair deal for Rock Creek. I hope the transaction is approved and we look forward to other transactions in the future.

Motion was made by Mr. Johnson to approve the Land Banking Sale. Seconded by Ms. McCulloch.

Governor Schweitzer said has the public comment been all positive? Has there been any negative comment?

Ms. Sexton said as far as I know it has been positive.

A vote was taken on the motion to approve. Motion carried unanimously.

907-6 OIL AND GAS LEASE SALE (Held September 5, 2007)

Ms. Sexton said the lease sale was held on September 5, 2007, at the Department of Transportation, offering 469 tracts for sale. They were leased for a little over a million dollars, and covered 2,002 acres. The average bid \$5.25/acre, the high bid was \$165/acre for a tract in Richland County, and the largest total bid was \$28,000 for Tract 1 which is in Blaine County. Ms. Sexton requested approval of the issuance of the leases from the sale.

Motion was made by Mr. McGrath to approve the lease sale. Seconded by Mr. Johnson.

Governor Schweitzer said we're starting to see some activity in Fergus County and frankly that is good news. What's going on?

Monte Mason, DNRC Minerals Management Bureau Chief, said yes, we did have a number of tracts nominated and leased in Fergus County. The large majority went to the applicant, but there was some sporadic bidding that the high was \$41.00/acre and there were quite a few between \$10 and \$20/acre for bid. My best guess from hearsay is they are trying to find some shallow gas. It has not been something that has been productive in the past so if they are successful that would be good news for Fergus County and for us.

Governor Schweitzer asked if Mr. Mason had an idea is it in the Kootenai or Colorado Shale? Where does it play?

Mr. Mason said I don't know.

A vote was taken on the motion to approve the lease sale. Motion carried unanimously.

907-7 DOG WING TIMBER SALE

Ms. Sexton said before I get into the discussion of the Dog Wing Timber Sale, I want to let the Board members know we have been very diligently reviewing and looking at the lands that burned this summer. We have over 10,000 acres of state trust land that burned, about 7,200 were forested. There is a good deal of merchantable timber so we are cruising that timber and we hope to bring the first fire salvage sales to the November Board meeting. And we are also going to bring some bug salvage sales to the November meeting, so you'll probably have about 15 Mbf at that meeting of both bug and fire salvage sales. We may also be awarding these sales because we like to get them done during the winter when it is the best time contingent upon Land Board approval. We have done this before with the Sula Salvage sale so I just wanted to give a heads up on that.

Ms. Sexton said the Dog Wing Timber Sale which is located in the Stillwater Unit area, 11 air miles west of Whitefish. The trust distribution is partly public schools, 53%, some common schools, and about 3% is MSU. This is within the wildland urban interface and the sale consists of six harvest units totaling 281 acres and it will be 100% tractor logged. The estimated volume is 2,586 Mbf and an additional Forest Improvement Fee of \$2.95/ton will be added. There will be .3 miles of new road construction required to access the sale. There has been public involvement and the issues include fuels reduction because there are rural homes surrounding this sale and it would reduce dense fuels within the harvest area and particularly on 76 acres that border private land, firefighting efforts will benefit. There is an integrated weed plan and it will be rigorously followed. Ms. Sexton recommended approval of the Timber Sale.

Motion was made by Ms. McCulloch to approve the Dog Wing Timber Sale. Seconded by Mr. Johnson. Motion carried unanimously.

907-8 RIGHTS-OF-WAY APPLICATIONS FOR APPROVAL

Ms. Sexton said this month we have five requests for rights-of-way with historic private access road, there are four of these, and a new municipality utility. Two of these requests were postponed from the August 2007, meeting. We do have a statement regarding the Rehberg R/W request as well as the City of Billings for a utility for new reservoirs to expand their water system. This month the requests are #13426 from Dennis Rehberg for a private access road for the purpose of conducting normal farming and ranching activities; #13592 from the City of Billings for a 16" municipal water line, a 12-15" municipal sewer line, and 60-foot access road; #14405 from Richard Dengel for a private access road to a family cemetery; #14406 from Brandon and Kristin Gasvoda and Little Sandy Creek Farms, Inc. for a private access road for conducting normal farming and ranching activities; and #14407 from Ray and Amy Sibra for a private access road for conducting normal farming and ranching activities.

Motion was made by Mr. Johnson to approve the rights-of-way as a package. Seconded by Mr. Morrison. Motion carried unanimously.

INFORMATIONAL ITEMS

807-9 UPDATE: PPL. v. STATE OF MONTANA

Presented by Attorney General Mike McGrath

General McGrath said I'll be brief, we were involved in a mediation on this issue a week ago, we had both PPL and Avista involved in the mediation. We were not able to resolve it. We're still in discussions with both of those entities but I don't know if we'll make any progress. We have a trial date set for the middle of October, I think it is the 15th of October. It is hard to know how long a trial will last, two to three weeks I would anticipate. The preliminary decisions that have come from the District Court have been by and large favorable to the state's position. There is no question about navigability any more, there is no questions about whether it is state trust land under the banks of those streams. The judge did rule that we are not able to pursue the area underneath the reservoirs behind these dams, merely we get the streambeds. That's where we are at this point. There are some preliminary skirmishes but the mediation was, trying as hard as we did for two days, unsuccessful.

Motion was made by Mr. McGrath to adjourn, seconded by Mr. Johnson.